

Before the  
Administrative Hearing Commission  
State of Missouri



MARVIN L. BERRY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 14-1596 PO
	)	
DIRECTOR OF PUBLIC SAFETY,	)	
	)	
Respondent.	)	

**DECISION**

We dismiss the complaint filed by Marvin L. Berry because we lack authority to hear it.

**Procedure**

On September 30, 2014, Berry filed a letter “to appeal and defend” his certification as a peace officer. The Director filed motion to dismiss Berry’s appeal on October 20, 2014. We notified Berry that he could file a response by November 4, 2014, but he filed nothing.

We may grant a motion for involuntary dismissal based on a preponderance of admissible evidence. Regulation 1 CSR 15-3.436(3).<sup>1</sup> Admissible evidence includes an allegation in the complaint, discovery response of the petitioner, affidavit, or other evidence admissible under the law. *Id.* In this case, the Director relies on a decision of this Commission, issued on February 18, 2014, and his own letter of April 30, 2014, revoking Berry’s peace officer license. We may take

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<sup>1</sup> All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

official notice of our own files. *See Conley v. Treasurer of Missouri* , 999 S.W.2d 269, 275 (Mo.App. E.D., 1999), overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc, 2003) (Labor and Industrial Relations Commission may take official notice of its own files). Although the Director's letter is not authenticated, we infer its authenticity because it is corroborated by Berry's complaint. Therefore, the following facts, as established by those records and Berry's complaint, are undisputed.

### **Findings of Fact**

1. On June 10, 2013, the Director filed a complaint seeking to discipline Berry's license for committing several criminal offenses. We opened case no. 13-1039 PO. Berry did not file an answer.
2. On December 31, 2013, the Director filed a motion for summary decision in case no. 13-1039 PO. We notified Berry that he could file a response to the motion for summary decision, but he filed no response.
3. We issued a decision on February 18, 2014, finding cause to discipline Berry under § 590.080.1(2)<sup>2</sup> because he committed three criminal offenses. We certified the record in case no. 13-1039 PO to the Director on March 25, 2014.
4. The Director revoked Berry's peace officer license by letter dated April 30, 2014.

### **Conclusions of Law**

We have jurisdiction over appeals involving the discipline or denial of peace officer licenses. Sections 590.080 and 590.100. But we lack authority to consider Berry's appeal in this case.

Berry's complaint contains a lengthy narrative of the circumstances surrounding his criminal offenses. He denies he committed them, and requests a review of the disciplinary action

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<sup>2</sup> Statutory references are to the RSMo Supp. 2013 unless otherwise noted.

imposed against him, a re-evaluation of the evidence, and the restoration of his peace officer license. He apologizes to this Commission for his tardy response.

It is unclear whether Berry intends his complaint as a response to the Director's motion for summary decision in case no. 13-1039 PO, or a motion for reconsideration, or a new complaint appealing his revocation, or an appeal of our previous decision. But no matter how we construe the complaint, we cannot consider it.

If we construe the complaint as a response to the Director's motion for summary decision in case no. 13-1039 PO or a motion for reconsideration in that case, it is simply too late. Berry was notified of the time he could respond to the motion, and he did not file any response. We issued our decision on February 18, 2014, and lost any subsequent authority to reconsider it on March 25, 2014, when we certified the decision and the record to the Director.

If Berry intends that his complaint be considered as an appeal of the Director's decision to revoke his license, he has filed it in the wrong tribunal. License discipline cases are final when the discipline order is entered, and the decision of this Commission and the licensing authority are treated as one decision. Section 621.145, RSMo. 2000. Such appeals must be filed in the circuit court of the county with proper venue within thirty days after the mailing or delivery of the agency's final decision. Section 536.110.

Here, although we do not know when the Director mailed his decision to Berry, the proper venue for his appeal would be the circuit court of Cole County or of his residence – not this Commission. If an agency arrives at a terminal, complete resolution of a case, a decision is final and not subject to collateral attack. *St. Louis Metropolitan Towing v. Director of Revenue*, 2014 WL 4287673, \*3 (Mo. App. W.D., 2014). The decisions of this Commission and the Director fully disposed of Berry's right to contest the issues presented in case no. 13-1039 PO –

whether Berry committed criminal offenses and that his license should be revoked. We have no more authority to consider those issues.

If we lack authority to hear a complaint, we can take no action other than to exercise our inherent power to dismiss it. *State Bd. of Registration for Healing Arts v. Draper*, 280 S.W.3d 134, 136 (Mo. App., E.D., 2009). We do so in this case.

### **Summary**

We dismiss Berry's appeal because we lack authority to hear it.

SO ORDERED on November 13, 2014.

/s/ Karen A. Winn

KAREN A. WINN  
Commissioner